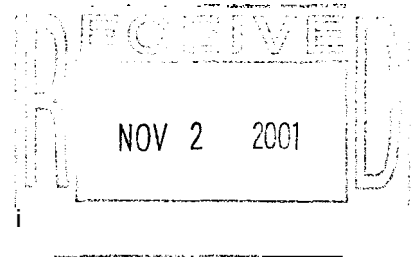




Jean-Michel Cousteau - Keiko

November 2, 2001

Ann Terbush
Chief, Permits Division
National Marine Fisheries Service
Room 13102
1315 East-West Highway
Silver Spring, MD 20910



Re: Proposed Permit Regulations

Dear **Ann**:

On behalf of the Ocean Futures Society (OFS), I ~~am~~ writing to comment on the proposed Marine Mammal Protection Act (MMPA) permit regulations published on July 3, 2001. Specifically, I wish to offer the views of OFS on the issues of comity with foreign nations, the manner in which the National Marine Fisheries Services (NMFS) should effectuate a comity relationship, and captive release. My comments are offered from the perspective of OFS' involvement in the Keiko reintroduction project.

OFS supports the use of comity letters. The MMPA does not confer upon the United States jurisdiction over marine mammals in foreign countries, and a comity arrangement is a reasonable approach to meet the goals of the MMPA. A properly implemented comity arrangement not only provides protection of the animal involved and satisfies the "comparability" requirement of section 104(d)(9) of the MMPA, it also advances the policy objective of promoting U.S. policies toward marine mammal conservation in foreign countries.

The Keiko experience is a good example. Working cooperatively with NMFS, the Free Willy Keiko Foundation secured a comity letter from Iceland prior to the export of Keiko. This letter, which would readily meet the requirements of your proposed comity requirement, was achieved without great difficulty ~~from~~ the Icelandic government. In fact, based upon this cooperative approach, Iceland went further and developed its own regulations for keeping an orca in captivity based on U.S. standards. Iceland also implemented a scientific research permit process and conducts periodic review and oversight of our activities. The Icelandic government is also cooperating in our research endeavors and has entered an unique agreement to assume rescue responsibilities should they be necessary for Keiko. Again, the model for that

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agreement is the approach used in the **U.S.** for stranding program agreements with states.

As these examples point out, comity can do far more than satisfy the export requirements of the Act. When properly and carefully executed by the private parties involved, without undue interference by NMFS or the U.S. government, it can lead to significant conservation and foreign policy benefits. What better example could there be than for a nation that has a track record of supporting commercial whaling to join in such a high-profile whale conservation effort as the Keiko reintroduction project? In our experience, comity is not only an effective way to satisfy the legal requirements of the MMPA, it is also a strong and effective tool for achieving international cooperation in marine mammal protection.

This observation leads to our second point, which is that once comity is established, NMFS needs to be respectful of the sovereignty of the foreign nation involved. Under comity, the U.S. necessarily says to the foreign government: "We are relying on you to fulfill the comity agreement and exercise your own judgment for that purpose." NMFS needs to follow a "hands off" approach if this relationship is to work well, especially in a situation where a strong relationship exists between the foreign government and the party responsible for the marine mammal involved. Certainly, it is appropriate for NMFS to maintain contact with and, from a respectful distance, communicate views to the foreign government. But if NMFS plays an intrusive or heavy-handed role, the gains achieved through a comity agreement can be lost and the prospects for future cooperation diminished. It is particularly important that NMFS, and by extension the U.S. government, not be perceived by the foreign government as arrogantly imposing its regulations upon the sovereign rights of the foreign government. We recognize that the level of subtlety implied in the above statement requires substantial patience, trust and diplomacy. This principle should be at the forefront of any comity arrangement NMFS establishes.

OFS also expresses its approval of the proposal to require advance approval of projects aimed at release or reintroduction of marine mammals. However, we do not believe scientific research and species enhancement permits are the only mechanisms that can be used. In many cases, such efforts are in the best interests of the animal involved and need not fall back on research or species enhancement permits. Instead,

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NMFS could also use release/reintroduction approval mechanisms under section 109(b)(1)(A) or section 112(c) of the Act. Congress has enacted no law requiring that NMFS be so restrictive in its approach, and more flexibility is desirable.

In addition, OFS notes that NMFS' discussion of captive release in the preamble to the regulations is far too pessimistic, unrealistic, and negative. Keiko, as one example, has in effect been successfully reintroduced to the wild, with none of the adverse consequences NMFS attributes to release/reintroduction. Through his numerous extended ocean walks, solitary time at sea, interactions with wild whales, and life in the natural waters of Klettsvik Bay, Keiko has demonstrated that reintroductions can be accomplished successfully. Any of the scientists, marine mammal behavior experts, and trainers associated with our project – among the most experienced in the world – will attest to the feasibility of release/reintroduction programs. For NMFS to persist in its unduly critical perspective on this issue will put the agency at odds with a substantial body of credible expert opinion and call into question the objectivity and fairness of its review of release/reintroduction requests. OFS suggests that NMFS provide a more balanced and objective assessment of the prospects for successful release/reintroduction.

Finally, OFS believes that authorization should be available for taking cetaceans on ocean walks. Such activities can be beneficial to the animals involved, and should not be limited to pinger recall training. Such walks must, of course, be carefully controlled and not pose risk to the animal or wild populations. The NMFS regulations need to have flexibility for this purpose.

Thank you for the opportunity to comment on these regulations. If you have any question about these comments, please contact me.

Very truly yours,

Charles Vinick
Executive Vice President

cc: Robert H. Mattlin, Ph.D

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